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LING TOWI SING & ORS v. DATO' NG KONG YEAM; KAY SWEE PIN & ANOR (PROPOSED INTERVENERS)

HIGH COURT MALAYA, JOHOR BAHRU
TEO SAY ENG J
[ORIGINATING SUMMONS NO: 24NCVC-242-10-2013]
B 29 MAY 2016

CIVIL PROCEDURE: *Judgments and orders – Application to intervene and set aside – Court declared respondent of unsound mind and appointed lawful wife and children as committee to manage respondent's affairs – Whether respondent's*
C *mistress and illegitimate child as proposed interveners could be added as party to proceedings – Whether proposed interveners had locus standi – Rules of Court 2012, O. 15 r. 6(2)(b)(i) – Whether proposed interveners entitled to be served with notice of application – Whether an inquiry should be ordered to determine respondent's mental health under s. 52 of Mental Health Act 2001 – Whether medical report*
D *submitted in court questionable – Whether new inquiry under ss. 62 & 74 of Mental Health Act 2001 should have been ordered – Whether there was inordinate delay in filing application*

CIVIL PROCEDURE: *Parties – Joinder of parties – Proposed interveners – Appointment of lawful wife and children as committee to manage respondent's*
E *affairs – Whether respondent's mistress and illegitimate child as proposed interveners could be added as party to proceedings – Whether proposed interveners had locus standi – Rules of Court 2012, O. 15 r. 6(2)(b)(i) – Whether proposed interveners entitled to be served with notice of application – Whether an inquiry should be ordered to determine respondent's mental health under s. 52 of Mental Health Act*
F *2001 – Whether medical report submitted in court questionable – Whether new inquiry under ss. 62 & 74 of Mental Health Act 2001 should have been ordered – Whether there was inordinate delay in filing application*

The applicants, the lawful wife and legitimate children of the respondent, applied for an order that an inquiry pursuant to s. 52 of the Mental Health
G Act 2001 ('the MHA') be carried out to determine if the respondent was of unsound mind and if so, for the appointment of the applicants as a committee over his estate ('the original application.') On 6 December 2013, based on a report by one Dr Calvin Fones, a consultant psychiatrist who concluded that the respondent was suffering from frontal temporal dementia and was
H incapable of managing his affairs due to a mental disorder, this court determined that the respondent was of unsound mind and appointed the applicants as the committee ('the original order'). Since the date of the original order, the respondent's physical and medical well being had been under the care of the committee. The committee had also managed his affairs
I including his assets since that date. The first proposed intervener and second proposed intervener, the respondent's mistress and illegitimate child respectively, sought (i) an order to intervene and to set aside the order of this court; and (ii) a further order to appoint the two proposed interveners as the fifth and sixth applicants to manage the affairs of the respondent

(encl. 9). The issues that arose were (i) whether the proposed interveners had the *locus standi* to intervene and be allowed to be added as parties to the proceedings under O. 15 r. 6(2)(b)(i) of the Rules of Court 2012; (ii) whether the proposed interveners were entitled to be served with the notice of the original application; (iii) whether the court should have ordered an inquiry to determine whether the respondent was mentally disordered and was incapable of managing himself and his affairs under s. 52 of the MHA 2001; (iv) whether the order of 6 December 2013 should be set aside on grounds that (a) Dr Cavin Fones' medical report was questionable; and (b) that there was a non-disclosure of one Dr Mark Chan's medical report and the existence of an agreement for the first proposed intervener to apply for a committee for the respondent; (v) whether a new inquiry under ss. 62 and 74 of the MHA should be ordered; (vi) whether the proposed interveners were suitable to be added as fifth and sixth applicants of the committee; and (vii) whether there was an inordinate delay on the proposed interveners' part in filing for this application.

Held (dismissing proposed interveners' application):

(1) The proposed interveners were closely related to the respondent, thus they should be added as parties to this proceeding on the ground that it was necessary to ensure that all matters in dispute pertaining to the order dated 6 December 2013 may be effectually and completely determined and adjudicated upon under O. 15 r. 6(2)(b)(i) of the Rules of Court 2012. Hence, the proposed interveners should be given the right to be heard. (para 16)

(2) Section 53(1) of the MHA provides that notice of the inquiry must be given to the person who had alleged to be mentally disordered but made no mention of any other person to whom notice need to be given. Hence, the proposed interveners were not entitled to the notice as envisaged in s. 53(1) of the MHA for the simple reason that there was no such requirement under the Act. It was also established that notice of the original application had been served on the first applicant, that was, the person in charge of the respondent, and this constituted a good notice. (paras 21 & 27)

(3) A perusal of s. 52 clearly showed that it was a matter of discretion of the court whether to order an inquiry to determine the mental condition of the subject as the word used in the said provision is "may" and not "shall." The exercise of the judicial discretion would depend on the facts of each case. In cases of doubts, the court may order an inquiry which was not mandatory in all cases. The court had relied on Dr Calvin Fones' medical report and the affidavit evidence and made the order that the respondent was mentally disordered and was incapable of managing himself and his affairs by dispensing with the inquiry. This clearly

showed that the court had no doubt about the mental condition of the respondent. There was no flaw in the exercise of the judicial discretion over such matter by the court. (para 31)

(4) It was not wrong for Dr Calvin Fones to write his report based on the antecedents given by the first applicant, the lawful wife of the respondent. Further, the non-disclosure of Dr Mark Chan's report was not relevant to the original application as it was made nearly a year before the original application for the specific purpose namely to inform the court in Hong Kong that the respondent was not in a position to give evidence. The failure to determine the period during which the respondent was mentally disordered by court was not fatal as there was no such requirement under the MHA for the specialist to do so unless there was a special request by the family of the respondent. Thus, the submission that Dr Calvin Fones' report was questionable for the reasons advanced by the proposed interveners was totally without basis. (paras 34-36)

(5) Based on emails between the first proposed intervener and the third applicant, the first proposed intervener had decided to relinquish her responsibilities over the respondent. Thus, the non-disclosure of the alleged agreement for the first proposed intervener to apply to the court for a committee for the respondent in the original application was not fatal as it was superseded by events, namely, the said agreement was made while the respondent was still in Singapore and the first proposed intervener had relinquished her responsibilities of the respondent by sending him to the care of the first appellant in Johor Bahru. (paras 46 & 47)

(6) There was insufficient evidence to show that the respondent's mental incapability had ceased. There was thus no need to order a fresh inquiry unless there was a change of the mental condition of the respondent. Further, the proposed interveners' submission that the current committee was not appointed in accordance with the respondent's wishes was without merit. The decision in appointing a committee must be made in the best interest of the respondent and the respondent's wishes need not be the decisive factor. The two proposed interveners were not suitable to be added to the current committee as they were 'residents' in Singapore. The first proposed intervener had decided to move on without any more concern regarding the respondent's affairs. (paras 58-60)

(7) The original order was granted on 6 December 2013 and the application in encl. 9 was filed on 5 May 2015. There was a gap of one year and five months. The delay was not an inordinate delay taking into account the nature of the issues involved and the time taken up in preparation for the said application. The issue of delay raised by the applicants was without merit. (para 62)

Case(s) referred to:

Arab Malaysian Merchant Bank Bhd v. Dr Jamaluddin Dato' Mohd Jarjis [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 SC ***(refd)***

Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Gary Lim Ting Howe & Ors [2014] 6 CLJ 55 CA ***(refd)***

United Malayan Banking Corp Bhd v. Sykt Perumahan Luas Sdn Bhd [1988] 1 CLJ 577; [1988] 2 CLJ (Rep) 522 HC ***(refd)***

Legislation referred to:

Mental Health Act 2001, ss. 2, 51, 52, 53(1), 62, 74

Rules of Court 2012, O. 15 r. 6(2)(b)(i), (ii)

For the applicant - Gopal Sreenevasan & Ling Hua Keong; M/s Ling & Mok

For the intended interveners - R Jayabalan & Fadhil Ihsan Mohamad Hassan; M/s Azwad Ihsan & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Teo Say Eng J:

[1] This is an application by two proposed interveners seeking (i) an order to intervene and to set aside the order of this court granted on 6 December 2013 and (ii) a further order to appoint the two proposed interveners as the fifth and sixth applicants to manage the affairs of the respondent (encl. 9).

Background Facts As Summarised By The Applicants

[2] On 23 September 2013 four applicants applied for an order that an inquiry pursuant to s. 52 of the Mental Health Act 2001 ("the MHA") to determine if the respondent was of unsound mind and if so, for the appointment of the applicants as a committee over his estate ("the original application"). The four applicants were the lawful wife and legitimate children of the respondent (hereinafter to be referred to as the applicants). On 6 December 2013, this court determined that the respondent was of unsound mind and appointed the original applicants as the committee ("the original order").

[3] What precipitated the original application was the deteriorating mental condition of the respondent. According to the original applicants, this occurred towards the end of 2011. What was before this court when the original order was granted was a report by one Dr Calvin Fones, a consultant psychiatrist at Gleneagles Medical Centre, Singapore, who is also an Associate Professor of the National University of Singapore.

[4] Dr Calvin Fones' report dated 20 August 2013 was unequivocal in concluding that the respondent was incapable of managing his affairs due to a mental disorder. He diagnosed him as suffering from frontal temporal dementia. The applicants had previously obtained a report dated 5 October 2012 from one Dr Mark Chan, a consultant in geriatric medicine at Tan Tock Seng Hospital, Singapore, which also confirmed the diagnosis of frontal

temporal dementia. Dr Chan's report was however in relation to the respondent attending legal proceedings and was not an evaluation for the purposes of the Mental Health Act. Dr Chan's report was not before the court when the original order was made.

[5] What was also before the court at the time of the original application was the fact that the first proposed intervener has been the respondent's mistress since 1985 and the second proposed intervener is the respondent's illegitimate child. However, neither of the two proposed interveners was served with the original application.

[6] Since the date of the original order, the respondent's physical and medical well-being has been under the care of the committee. The committee has also managed his affairs including his assets since that date. In this regard, it should be pointed out that the respondent was a man of substantial means with assets in Singapore and Malaysia.

Grounds Of Application

[7] That the two proposed interveners should be allowed to intervene and be added as parties to the proceedings under O. 15 r. 6(2)(b)(i) and (ii) of the Rules of Court 2012.

[8] That the proposed interveners were not given notice of the original application.

[9] That there has been non-disclosure of (i) Dr Mark Chan's report in the original application and (ii) the existence of the agreement for the first proposed intervener to apply for a committee for the respondent.

[10] That the committee is engaged in litigation with the two proposed interveners and therefore does not represent a suitable committee for the respondent and hence the two proposed interveners should be added as the fifth and the sixth applicants of the committee to manage the respondent and his affairs.

[11] The following affidavits have been filed by the parties:

(a) supporting affidavit of Kay Swee Pin affirmed on 9 April 2015;

(b) supporting affidavit of Wu Yumei Eva Mae affirmed on 9 April 2015;

(c) reply affidavit (I) of Ling Towi Sing @ Ling Choi Sieng affirmed on 1 June 2015;

(d) reply affidavit (II) of Ng Chung San affirmed on 1 June 2015;

(e) reply affidavit (II) of Kay Swee Pin affirmed on 8 July 2015;

(f) reply affidavit (III) of Ng Chung San affirmed on 29 July 2015;

(g) reply affidavit (IV) of Ling Towi Sing @ Ling Choi Sieng affirmed on 27 July 2015;

(h) reply affidavit (II) of Kay Swee Pin affirmed on 14 August 2015;

(i) reply affidavit (V) of Ng Chung San affirmed on 15 September 2015;

(j) reply affidavit (IV) of Kay Swee Pin affirmed on 13 October 2015; and

(k) reply affidavit (VI) of Ng Chung San affirmed on 29 October 2015.

Written Submissions

[12] Both the parties have filed their respective written submissions as can be found as follows:

(i) L 29 hujahan pencelah yang dicadangkan;

(ii) L 39 hujahan tambahan pencelah yang dicadangkan;

(iii) L 31 outline submission of the committee; and

(iv) L 40 committee's further submission.

Rulings Of The Court

Issue No 1: *Whether The Proposed Interveners Have The Locus Standi To Intervene And Be Allowed To Be Added As Parties To The Proceedings Under O. 15 r. 6(2)(b)(i) And (ii) Of The Rules Of Court 2012*

Proposed Interveners' Submissions

[13] The proposed interveners submit that under O. 15 r. 6(2)(b)(i) and (ii) of the Rules of Court 2012, a person may be added as a party to a proceeding at any stage of the proceedings, if it can be shown that the person is directly affected either legally or financially by any order which may be made in the action based on the ground that first proposed intervener and the respondent were living as husband and 'wife' for 18 years and the second proposed intervener is his daughter. The first proposed intervener will be privy to many issues concerning his assets and businesses. They submit that they have met the requirements as they are directly affected both legally and financially by the order of 6 December 2013.

Applicants' Submissions

[14] The applicants submit that the two proposed interveners are not entitled to intervene for the following reasons:

(i) The first proposed intervener is not the lawful wife of the respondent and the second purposed intervener is the illegitimate daughter of the respondent;

(ii) They have no legal standing, not being within the definition of a "relative" pursuant to the MHA; and

(iii) The MHA does not recognise their legal standing in the affairs of the respondent.

[15] The applicants have cited the following cases in support of their contention:

(i) *United Malayan Banking Corp Bhd v. Sykt Perumahan Luas Sdn Bhd* [1988] 1 CLJ 577; [1988] 2 CLJ (Rep) 522; [1988] 1 MLJ 546

(ii) *Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis* [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19; [1991] 1 MLJ 27.

Ruling Of The Court

[16] First and foremost, I rule that the proposed interveners who are closely related to the respondent should be added as parties to this proceeding on the ground that it is necessary to ensure that all matters in dispute pertaining to the order dated 6 December 2013 may be effectually and completely determined and adjudicated upon under O. 15 r. 6(2)(b)(i) of the Rules of Court 2012.

[17] Hence they should be given a right to be heard on the issues raised in their application in encl. 9.

Issue No. 2: *Whether The Proposed Interveners Are Entitled To Be Served With Notice Of The Original Application*

Proposed Interveners' Submissions

[18] The proposed interveners submit that the applicants did not serve the original application on them or gave them notice of the application. Neither did they serve the original application on the respondent. There was no court order dispensing service on the respondent in empowering the first applicant to receive the cause papers on behalf of the respondent.

[19] Hence the proposed interveners submit that for the above reasons the order dated 6 December 2013 which was made in the absence of the respondent should be set aside.

Applicants' Submissions

[20] The applicants submit that s. 51 of MHA provides that "relative" can apply to the court for an inquiry. "Relative is defined in s. 2 of the MHA as follows:

> "relative" means any of the following persons of or above eighteen years of age:
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> (a) Husband or wife;
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> (b) Son or daughter;
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> (c) Father of mother;
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> (d) Brother or sister;
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> (e) Grandparent;

(f) Grandchild;

(g) Maternal or paternal uncle or aunt;

(h) Nephew or niece.

[21] Section 53(1) of the MHA provides that notice of the inquiry must be given to the person alleged to be mentally disordered but makes no mention of any other person to whom notice need be given.

[22] If one takes these two sections together, it is tolerably clear that the statutory framework provides that only a prescribed relative can apply for the inquiry and only the person who is the subject of the application need be given notice.

[23] It is against this statutory framework that one must consider whether either of the proposed interveners was entitled to notice of the original application. The applicants submit they were not, given that the first proposed intervener has no legal standing, not being within the definition of a "relative" pursuant to the MHA.

[24] As to the second proposed intervener, the applicants submit that given that she is an illegitimate child, she too has no legal standing.

Ruling Of The Court

[25] It is not disputed that the proposed interveners were not served with the original application or given notice of the hearing of the said application.

[26] I agree with the applicants that s. 53(1) of the MHA provides that notice of the inquiry must be given to the person who was alleged to be mentally disordered but makes no mention of any other person to whom notice need to be given.

[27] Hence, I ruled that the proposed interveners are not entitled to the notice as envisaged in s. 53(1) of the MHA for the simple reason that there is no such requirement under the Act. Be that as it may, it has been established that notice of the original application had been served on the first applicant, that is, the person in charge of the respondent and this, to me, constitutes a good notice.

Issue No. 3: Whether The Court Should Have Ordered An Inquiry To Determine Whether The Respondent Was Mentally Disordered And Was Incapable Of Managing Himself And His Affairs Under s. 52 Of The Mental Health Act 2001 (the MHA)

[28] In this case, the court made an order by relying on Dr Calvin Fones' medical report and the affidavit evidence that the respondent was mentally disordered and was incapable of managing himself and his affairs without ordering for an inquiry.

[29] The proposed interveners submit that this itself is erroneous as the court cannot solely rely on the medical report and make such a finding. A finding of mental disorder is a judicial decision and not a medical decision. There should be an inquiry by the court or at least a provisional assessment by the court as to the mental condition of the respondent.

[30] With respect, I find that such a submission by the proposed interveners is without merits for the following reasons.

[31] A perusal of s. 52 clearly shows that it is a matter of discretion of the court whether or not to order an inquiry to determine the mental condition of the subject as the word used in the said provision is 'may' and not 'shall'. The exercise of the judicial discretion would depend on the facts of each case. In cases of doubts, the court may order an inquiry which is not mandatory in all cases. In the case before us, the court has relied on Dr Calvin Fones' medical report and the affidavit evidence and made the order that the respondent was mentally disordered and was incapable of managing himself and his affairs by dispensing with the inquiry. This clearly shows that the court has no doubt about the mental condition of the respondent based on the evidence tendered before the court. I do not see any flaw in the exercise of the judicial discretion over such matter by the court which was proper and permitted under s. 52 of the MHA.

Issue No. 4

[32] Whether the order dated 6 December 2013 should be set aside on the ground:

(i) that Dr Calvin Fones' medical report is questionable.

(ii) that non-disclosure of Dr Mark Chan's medical report and the existence of an agreement for the first proposed intervener to apply for a committee for the respondent.

(i) *Dr Calvin Fones' Report vis-à-vis Dr Mark Chan's Report*

[33] The proposed interveners submit that Dr Calvin Jones' report is questionable or unsatisfactory for the following reasons:

(a) Dr Calvin Fones' report is based on the antecedents given by the applicants who had ten days of living with the respondent. The proposed interveners having lived with the respondent for 18 years would be in a far better position to give a more accurate antecedent.

(b) The report does not indicate that Dr Calvin Fones had seen or examined Dr Mark Chan's or Dr Nagaendran's earlier report. There was only a general narration based on the information given by the second applicant. The second applicant who knew about the earlier two reports did not bring the reports to the attention of Dr Calvin Jones.

(c) There was no determination of the period during which the respondent was mentally disordered.

[34] Having perused the written submissions by both the parties, I find that there is nothing wrong for Dr Calvin Fones to write his report based on the antecedents given by the first applicant who is the lawful wife of the respondent. I also find that the non-disclosure of Dr Mark Chan's report is not relevant to the original application as rightly pointed out by the applicants that it was made on 5 October 2012 nearly a year before the original application was made and it was made for a specific purpose namely to inform the court in Hong Kong that the respondent was not in a position to give evidence and last but not least even if Dr Mark Chan's report were to be put before the court of the original application, the court would have come to the same finding since there was no difference in the clinical diagnosis of the two reports. As regards Dr Nagaendran's report, I am in no position to comment in what way it would affect the decision of the court since no evidence has been adduced as to its contents.

[35] I also find that the failure to determine the period during which respondent was mentally disordered by court is not fatal as there is no such requirement under the MHA for the specialist to do so unless there is a special request by the family of the respondent.

[36] For the above reasons, I find that the respondent's submission that Dr Calvin Fones' report is questionable for the reasons advanced by the proposed interveners is totally without basis.

(ii) Non-disclosure Of The Existence Of An Agreement For The First Proposed Intervener To Apply For A Committee For The Respondent In Singapore Around March 2013

Proposed Interveners' Submissions

[37] The proposed interveners submit that following the earlier (undisclosed) reports, around March 2013, there were discussions for the first proposed intervener to apply for a committee in respect of the respondent and the applicants to be made parties as well. The applicants had appointed a firm of solicitors KK Chong & Co to act for them. The proposed interveners submit that the applicants' answer (at p. 18 reply affidavit II – by second applicant) as to why this was not disclosed to the court is that this discussion took place when the respondent was still in Singapore and it became "moot and superseded by events" after the respondent was moved back to Johor Bahru on 30 July 2013.

[38] The court should have been informed of this matter so that the court could have given directions on whether notice of the proceedings ought to be given to the proposed interveners.

[39] In any event, the applicants should have informed the proposed interveners about the application when in fact they knew that there was a discussion before that the first proposed intervener was to make the application for a committee and the applicants to be made parties as well.

Applicants' Reply

[40] The applicants' reply as to why this was not disclosed to the court is that the said discussion took place where the respondent was still in Singapore and it was superseded by events after the respondent was moved back to Johor Bahru on 30 July 2013.

[41] The first proposed intervener had indicated that she wanted nothing more to do with the respondent when she arranged for the respondent to be sent back to Johor Bahru on 30 July 2013.

[42] This is evident in the e-mails between the first proposed intervener and the third applicant as shown in the applicants' affidavit in reply (II) exh. NCS 4 in encl. 16. The contents of the said e-mails among others, are that:

> I am prepared to leave the care of your Dad to your brother and mother if they feel they are the legally recognised guardians.
>
> I would like to move on with my life without anymore concerns regarding what your Dad really wants because I am tired.
>
> Since your family wants to take over full custody of your Dad, I have no choice but to relinquish the responsibility that your Dad had earlier entrusted to me of his affairs as I do not want to involve myself anymore legal interminglements with certain members of your family.

Proposed Interveners' Reply

[43] The proposed interveners submit that the decision to move the respondent back to Johor Bahru on 30 July 2013 was taken following the discussions between her and the third applicant – the respondent's eldest daughter. The moving back was done with full awareness of the respondent's condition and in his best interest.

[44] The e-mails at exh. A of the reply affidavit (II) of Kay Swee Pin affirmed on 8 July 2015 would show this. In fact, this is what the third applicant said in her e-mail to the first intervener (and copied to second intended intervener) on 28 July 2013 when the decision to move back the respondent was taken (see encl. 16 exh. NCS 4):

> Auntie Pin, you have been with Dad for so many years and I for one appreciate the happiness you have given him. Please do not think of this being permanent. While it would probably be best that he doesn't return to the Singapore home, there is no reason why you are Eva Mae cannot visit him occasionally. Let's just get through this period with less trauma on all sides and more importantly, that he adapts to life in JB. We can then take it from there ...

[45] Clearly it, was an amicable decision upon discussions and was not meant to be permanent. The first proposed intervener did not abandon Dato' Ng.

Ruling Of The Court

[46] Although there are two versions as to whether the first proposed intervener had abandoned the respondent by sending him to the care of the first applicant in Johor Bahru, after perusing the e-mails between the first proposed intervener and the third applicant (exh. NCS 4 in encl. 1.6) I am more inclined to think that the first proposed intervener had finally decided to relinquish her responsibilities over the respondent and would like to move on without any more concern of the respondent's affairs because she was tired.

[47] For the above reasons, I am of the considered view that the non-disclosure of the alleged agreement for the first proposed intervener to apply to the court for a committee for the respondent in the original application is not fatal as it was superseded by the events, namely, the said agreement was made while the respondent was still in Singapore and the first proposed intervener had relinquished her responsibilities of the respondent by sending him to the care of the first applicant in Johor Bahru.

Issue No. 6: *Whether A New Inquiry Under s. 62 And s. 74 Of The Mental Health Act 2001 Should Be Ordered*

Proposed Interveners' Submissions

[48] The proposed interveners submit that where there are reasons to believe that the respondent's mental incapability has ceased, the court may make an order for a fresh inquiry to determine whether the respondent is now capable of managing himself and his affairs pursuant to ss. 62 and 74 of the MHA: *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Gary Lim Ting Howe & Ors* [2014] 6 CLJ 55; [2014] 3 MLJ 874. The proposed interveners relied on the applicants' affidavits which have given new information about the possible current mental status of Dato' Ng:

(a) Ng Chung San's Affidavit Affirmed On 1 June 2015 (Encl. 16)

[49] At No. 10 and 15 – Dato' Ng strenuously complaining to the applicants that he has a lot of money in Singapore and this was true:

> In the meantime, our father had strenuously made complaints to us that he had a lot of money in Singapore ... we recorded these assertions on video for record purposes ... we were not sure as to how accurate they were due to his mental decline ...
>
> It turned out that my father was right as he did have a lot of monies in Singapore.

[50] At No. 132 – "It was my father who insisted when he came back that":

(a) He had a lot of money in Singapore – which was proven true as a result of our application to revoke the LPA of KSP:

(b) He still owned his apartment and his company in Singapore.

[51] At No. 134 – "It is because of his expressed wishes above that we have acted accordingly – it is not the result of manipulation. So far what he has said has been borne true by the events".

[52] At No. 142 – "Ever since he was returned to us on July 2013, my father repeatedly asked us to go back to Singapore as he owned monies in his bank account in Singapore and those two assets, that is, 28-03 Cairnhill Plaza and Sino America Tours Corporation Pte Ltd".

[53] At No. 143 – "There were stages when he was very frustrated with us for not bringing him to claim his monies".

(b) Dato' Ng Seems To Be Alert And Conscious Of His Surroundings Now And Even Gave A Press Interview

[54] Affidavit affirmed by the first applicant Ling Towi Sing @ Ling Chooi Sieng on 1 June 2015 (afidavit balasan I encl. 15) at No. 47 refers to a newspaper article on 10 October 2014 at exh. LCS8.

[55] Dato' Ng and the first applicant was interviewed by a reporter and the reporter discovered that "Ng Kong Yeam is very affectionate towards his wife, Ling Chooi Sieng. During the interview he many times praised his wife, noting that she is very capable and smart. Further, he even used the hand gesture to show that she is the best. Ng Kong Yeam disclosed that when he married his wife, she is one year older than him. Till to date, he still respects her very much. He will say: "I love you, I only want you, I only want to follow you."

[56] The proposed interveners further submit that it was not the respondent's wish that his affairs, in the event of his incapacity, are to be managed by the applicants. It was not his wish to go back and stay with the applicants on 30 July 2013.

Applicants' Submissions

[57] The applicants submit that the current committee is acting in accordance with the respondent's wishes based on the following grounds:

(i) The applicants are the lawful wife and legitimate children of the respondent and there can be no closer connection to the respondent that qualifies them to act as his committee.

(ii) Nowhere have the proposed interveners been able to say that the respondent's physical and mental well-being is not being served by this committee.

(iii) The current committee is under the supervision of and answerable to the court for whatever actions taken by them.

Ruling Of The Court

[58] I find that there is insufficient evidence before this court to show that the respondent's mental incapability has ceased. I do not see any need to order a fresh inquiry unless there is a change of the mental condition of the respondent.

[59] I also find that the proposed interveners' submission that the current committee is not appointed in accordance with the respondent's wishes is without merit. Even if it was true that it was the respondent's wishes that in the event he was unable to make decisions on his personal, healthcare, financial and all other matters and those decisions are then to be made by the proposed interveners as his donees, the decision in appointing a committee must be made in the best interest of the respondent and the respondent's wishes need not be the decisive factor. What is more important is whether the proposed interveners are persons suitable to be appointed as the committee to look after his affairs.

Issue No. 7: *Whether The Proposed Interveners Are Suitable To Be Added As Fifth And Sixth Applicants Of The Committee*

[60] Having considered carefully the affidavits filed by the parties, I find that the two proposed interveners are not suitable to be added to the current committee for the following reasons:

(i) They are "resident" in Singapore.

(ii) From the affidavit evidence adduced, I am more inclined to think that the first proposed intervener has decided to relinquish her responsibilities over the respondent and would like to move on without any more concern regarding the respondent's affairs.

Issue No. 8: Delay

[61] The applicants submit that the proposed interveners were aware of the original order for approximately one year before the making of this application. They chose to sit on their rights and not to make immediate application to intervene. No reason has been given for the delay in making this application.

[62] It is to be noted that the original order was granted on 6 December 2013 and the application in encl. 9 was filed on 5 May 2015. There was a gap of one year and five months. Although no reason was given for the delay, I do not think that a delay of one year plus in filing this application is an

A inordinate delay taking into account the nature of the issues involved and the time taken up in preparation for the said application. I therefore, rule that the issue of delay raised by the applicants is without merit.

Decision

B **[63]** For the above reasons, I dismissed the proposed interveners' application with cost of RM6,000.

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